



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

83-00680

January 20, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Agriculture  
Department of Commerce  
Department of Defense  
Agency for International Development  
U.S. Information Agency  
Office of Personnel Management  
Central Intelligence Agency  
Department of Education (Sec. 12(b)(B))  
Department of Justice (Sec. 11(1)(B) and 11(3))  
General Services Administration (Sec. 7 and 12(2) & (3))  
Merit Systems Protection Board (Sec. 2)

SUBJECT: Department of State draft bill "To amend the Foreign Service Act of 1980, and for other purposes."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than February 22, 1983. *Extension granted.*

Questions should be referred to Jim Barie (395-4580) or to Hilda Schreiber (395-4650), the legislative analyst in this office.

*No objection telephoned to Jim Barie 2-28-83.*

*Naomi R Sweeney*  
Naomi R. Sweeney for  
Assistant Director for  
Legislative Reference.

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Enclosures



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*Naomi R. Sweeney*

Naomi R. Sweeney for  
Assistant Director for  
Legislative Reference.

Enclosures

2/1/83:

copy given to Anne F.



DEPARTMENT OF STATE

Washington, D.C. 20520

Dear Mr. Speaker:

Enclosed for consideration by the Congress is a draft bill to amend the Foreign Service Act of 1980 and other statutes affecting the Department, together with a section-by-section analysis and a list of amendments.

The proposed amendments have been developed by the Department in cooperation with other foreign affairs agencies. Many of these proposed amendments reflect technical changes designed to clarify the 1980 statute and to improve its administration, while a few are designed to correct inequities among various groups of employees affected by the 1980 Act.

Also included are amendments to conform provisions of the Foreign Service Retirement and Disability System with comparable provisions of the Civil Service Retirement and Disability System recently amended by the Omnibus Budget Reconciliation Act of 1982, Public Law 97-253. Some of these conforming changes were implemented by Executive order No. \_\_\_\_\_ of January \_\_\_\_\_ 1983, pursuant to section 827 of the Foreign Service Act of 1980. The draft bill would codify all of the permanent provisions of the Executive order as well as make those conforming changes not possible to make by Executive order.

We estimate the overall cost of the draft bill to the Department at \$2.2 million annually. Section (4)(5) authorizing on-call pay in lieu of standby pay for non-officer personnel abroad would cost the Department an estimated \$1.2 million annually. Other amendments that would have a cost impact, including amendments to chapter 9 of the Foreign Service Act of 1980 and to Title 5 of the U.S. Code, would cost less than \$.9 million annually. Also, there would be a net savings to the Foreign Service Retirement Fund from enactment of the retirement amendments in section 6 of the draft bill.

The Honorable,  
Thomas P. O'Neill, Jr.,  
Speaker of the House,  
House of Representatives,  
Washington, D. C.

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We would appreciate the early consideration of these amendments by the Congress. A similar letter is being sent to the President of the Senate.

We have been advised by the Office of Management and Budget that there is no objection from the standpoint of the President's program to the enactment of the enclosed draft bill.

With cordial regards,

Sincerely,

Powell A. Moore  
Assistant Secretary for  
Congressional Relations

Enclosures:

1. List of Amendments
2. Draft Bill
3. Section by Section Analysis

PROPOSED AMENDMENTS TO THE  
FOREIGN SERVICE ACT OF 1980 AND RELATED LEGISLATION

<u>Section</u>	<u>Subject</u>	<u>Section of Act</u>
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CHAPTER 2: MANAGEMENT

✓ 2	"Hatching" the Inspector General and the Director General	FSAct 208/209
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CHAPTER 3: APPOINTMENTS

✓ 3(1)	Five Percent Limitation on Non- Career Members of SFS	FSAct 305(b)
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✓ 3(2)	Exclusions from 5 Year Limit on Limited Appointments	FSAct 309
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CHAPTER 4: COMPENSATION

✓ 4(1)	Salaries for Chiefs of Mission	FSAct 401(a)
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note 4(2)	Eligibility for Within Grade Salary Increases	FSAct 406(a)
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✓ 4(3)	Provident Funds for Foreign National Employees	FSAct 408
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note 4(4)	On-Call Pay	FSAct 414
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CHAPTER 6: PROMOTION AND RETENTION

✓ 5(1)	Ineligibility for Promotion After Expiration of Time-in-Class	FSAct 601(b)
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✓ 5(2)	Limited Career Extensions Below Highest Class in an Occupation/ Retention After Expiration of TIC to Gain Eligibility for an Immediate Annuity	FSAct 607(b)(1), 607(d)(2)
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✓ 5(3)	Retirement Benefits/Severance Pay for Individuals Separated from the Service after Expira- tion of TIC or Failure to Have A Limited Career Extension Renewed	FSAct 609
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✓ 5(4) Attorneys' Fees in Separation FSAct 610(a)(2)  
for Cause Cases

## CHAPTER 8: RETIREMENT

✓ 6(a)(1)	Definition of Former Spouse	FSAct 804(6)
<i>note</i> 6(a)(2)(A)	Repayment of Funds	FSAct 805(d)(1)
<i>note</i> 6(a)(2)(B)	Interest Rates on Contributions to Fund	FSAct 805(d)(3)
<i>note</i> 6(a)(2)(C)	Contributions for Military Service	FSAct 805(e)
<i>note</i> 6(a)(2)(D)	Contributions for Military Service	FSAct 805(f)
<i>note</i> 6(a)(3)(A)	Contributions for Civilian Service	FSAct 806(a)
✗ 6(a)(3)(B)(1)	Election of Survivor Annuity	FSAct 806(b)(1)(C)
<i>note</i> 6(a)(3)(B)(2)	Missing Persons	FSAct 806(b)(1)(D)
<i>note</i> 6(a)(4)	Later Commencement Date for Certain Annuities	FSAct 807(a)
✗ 6(a)(5), 6(a)(6)(A)	Age Requirement for Minimum Annuity and Disability Examination	FSAct 808(a) and(b), 809(e)
✓ 6(a)(6)(B)	Correction of Reference	FSAct 809(h)
✓ 6(a)(7)	Deferred Annuities	FSAct 810
<i>note</i> 6(a)(8)	Voluntary Retirement	FSAct 811
<i>note</i> 6(a)(9)(A)	Effective Date of Pension to Former Spouse	FSAct 814(a)(3)
<i>note</i> 6(a)(9)(B)	Court Ordered Changes	FSAct 814(a)(4)
<i>note</i> 6(a)(10)(A)	Refunds of Contributions	FSAct 815(a)
<i>note</i> 6(a)(10)(B)	Division of Refunds with Spouses on Request	FSAct 815(j)
✓ 6(a)(11)(A)	Credit for Military Service	FSAct 816(a)
✓ 6(a)(11)(B)	Contributions for Prior Civilian Service	FSAct 816(d)

note 6(a)(11)(C)	Benefits to Spouses and Former Spouses	FSAct 816(i)(1)
note 6(a)(11)(D)	Unhealthful Post Credit - Application to Former Spouses	FSAct 816(i)(2)
✓ 6(a)(11)(E)	Application of "Catch - 62" (5 USC 8332(j))	FSAct 816(j)
note 6(a)(12)	Unhealthful Post Credit - Application to Former Spouses - II	FSAct 817
note 6(a)(13)	Unfunded Liability Obligations	FSAct 822(a)
✓ 6(a)(14)(A)	Cost of Living Adjustments of Annuities	FSAct 826(c)
✓ 6(a)(14)(B)	Rounding Down	FSAct 826(e)
✓ 6(a)(14)(C)	Capping Annuity Adjustments	FSAct 826(g)
note 6(a)(15)	Missing Persons	FSAct 828
6(b)	Effective Dates	--

## CHAPTER 9: TRAVEL, LEAVE, AND OTHER BENEFITS

7(1)	Storage of Household Effects	FSAct 901(12)(B)
note 7(2)	Travel for Children of Separated Parents	FSAct 901(15)

## CHAPTER 10: LABOR - MANAGEMENT RELATIONS

8(1)	Designation of Investigators and Auditors as Management Officials for Labor - Management Purposes	FSAct 1002(12)
8(2)	Cost Sharing for Institutional Grievances	FSAct 1014(a)(3)

## CHAPTER 1(Title II): TRANSITION

9(1)	Protection of Rights Following Mandatory Conversion from Foreign Service to Civil Service	FSAct 2104
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9(2) Selection-Out Authority for FSAct 2106(e)(2)  
A.I.D.

CHAPTER 4(Title II): EFFECTIVE DATE

10 Foreign Commercial Service FSAct 2403(c)  
Limit on Noncareer SFS  
Appointments

DEPARTMENT OF STATE BASIC AUTHORITY

11 Use of Government Vehicles/ Basic Authority,  
Extra Per Diem for Individuals 2, 11, 30, 32  
Accompanying Dignitaries

TITLE 5, UNITED STATES CODE

12(1) Calculation of Lump Sum Leave 5 USC 5551  
Payment Upon Separation

12(2) Home Service Transfer Allowance 5 USC 5724(a)(3)

12(3) Travel and Transportation in 5 USC 5725(a)  
Conjunction with Separate  
Maintenance Allowance

12(4) Advance Payment of Differ- 5 USC 5922(b)  
entials

12(5) Education Allowances at Time 5 USC 5924(4)  
of Transfer, for Handicapped  
Children and at Post Secondary  
Educational Institutions

12(6) Burial Expenses for Foreign 5 USC 5944  
National Employees

M/DGP/PC  
1/14/83



A BILL

To amend the Foreign Service Act of 1980, and for other purposes.

1       Be it enacted by the Senate and House of Representa-  
2       tives of the United States of America in Congress  
3       assembled, That this Act may be cited as the "Foreign  
4       Service Act Amendments of 1983".

5                               MANAGEMENT OF THE SERVICE

6       SEC. 2. Chapter 2 of title I of the Foreign Service  
7       Act of 1980 is amended as follows:

8               (1) Section 208, relating to the Director General, is  
9       amended by adding at the end thereof the following new sen-  
10      tence:

11             "For the purposes of section 7324 of title 5, United  
12      States Code, the Director General shall not be consid-  
13      ered to be an employee who determines policies to be  
14      pursued by the United States in relations with foreign  
15      powers or in the nationwide administration of Federal  
16      laws."

17             (2) Section 209(a), relating to the Inspector General,  
18      is amended by adding at the end thereof the following new  
19      paragraph:

20             "(3) For the purposes of section 7324 of title 5,  
21      United States Code, the Inspector General shall not be  
22      considered to be an employee who determines policies

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1 to be pursued by the United States in relations with  
2 foreign powers or in the nationwide administration of  
3 Federal laws."

4 APPOINTMENTS

5 SEC. 3. Chapter 3 of title I of the Foreign Service Act of  
6 1980 is amended as follows:

7 (1) Section 305(b), relating to appointment to the  
8 Senior Foreign Service, is amended to read as follows:

9 "(b) An individual may not be given a limited  
10 appointment in the Senior Foreign Service if that  
11 appointment would cause the number of members of the  
12 Senior Foreign Service serving under limited appoint-  
13 ments to exceed 5 percent of the total number of mem-  
14 bers of the Senior Foreign Service, except that --

15 "(1) members of the Senior Foreign Service  
16 assigned to the Peace Corps shall be excluded in  
17 the calculation and application of this limita-  
18 tion, and

19 "(2) members of the Senior Foreign Service  
20 serving under limited appointments who have reem-  
21 ployment rights under section 310, as career  
22 appointees in the Senior Executive Service or as  
23 career senior appointees in any other Federal  
24 *new* personnel system, shall be considered to be  
25 career members of the Senior Foreign Service

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1 for purposes of this subsection.".

2 (2) Section 309, relating to limited appointments, is  
3 amended to read as follows:

4 "SEC. 309. LIMITED APPOINTMENTS. --(a) Except as  
5 provided in subsection (b), a limited appointment in  
6 the Service may not exceed 5 years in duration and may  
7 not be extended or renewed. An appointment in the  
8 Service which is limited by its terms to a period of  
9 one year or less is a temporary appointment.

10 "(b) A limited appointment may be extended in  
11 order to permit the completion of a current assignment  
12 or for continued service as --

13 "(1) a consular agent;

14 "(2) a family member employed under section  
15 311; or

16 "(3) a career candidate, if continued  
17 service is determined necessary to remedy a  
18 grievance cognizable under chapter 11."

19 COMPENSATION

20 SEC. 4. Chapter 4 of title I of the Foreign Service Act of  
21 1980 is amended as follows:

22 (1) Section 401(a), relating to salaries of chiefs of  
23 mission, is amended by inserting, immediately after "mis-  
24 sion", the words "appointed under section 302(a) (1)".

25 (2) Section 406(a), relating to within-class salary

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1 increases, is amended to read as follows:

2 " (a) Each member of the Service receiving a sal-  
3 ary under the Foreign Service Schedule, other than the  
4 highest step for the member's class, shall receive  
5 periodic increases in salary within the member's class  
6 unless the member's performance during the period set  
7 in regulations of the Secretary is found in a review  
8 by a selection board under section 602 to fall below  
9 standards of performance for the member's class."

10 (3) Section 408(a)(1), relating to local compensation  
11 plans, is amended by revising the third sentence thereof to  
12 read as follows:

13 "Any compensation plan established under this section  
14 may include provision for:

15 " (A) leaves of absence with pay for foreign  
16 national employees in accordance with prevailing  
17 law and employment practices in the locality of  
18 employment without regard to any limitations con-  
19 tained in section 6310 of title 5, United States  
20 Code; and

21 " (B) payments by the Government and foreign  
22 national employees to a trust or other fund in a  
23 financial institution in order to finance future  
24 benefits for foreign national employees, includ-  
25 ing provision for retention in the fund of accum-  
26 ulated interest for the benefit of covered

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foreign national employees.".

(4) Chapter 4 is further amended by adding at the end thereof the following new section:

"SEC. 414. On-Call Pay. -- (a) A member of the Service appointed by the Secretary and receiving a salary under the Foreign Service Schedule who is officially scheduled to be on call outside regular duty hours while assigned abroad may be paid for each hour of such on-call duty, except for such time as the member may be called back to work, at a rate equal to 10 percent of the rate of overtime pay for that member.

"(b) The total of on-call pay, when added to base salary and other premium pay, may not exceed in any year the maximum rate payable for grade GS-15 under section 5547 of title 5, United States Code."

#### PROMOTION AND RETENTION

SEC. 5. Chapter 6 of title I of the Foreign Service Act of 1980 is amended as follows:

(1) Section 601(b), relating to promotions, is amended by adding at the end thereof the following new sentence:

"The Secretary may exclude members of the Service from eligibility for promotion when they remain in the Service after expiration of time-in-class and any limited career extensions under section 607."

(2) Section 607, relating to retirement for expiration

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1 of time in class, is amended as follows:

2 (A) In subsection (b)(1), immediately after  
3 "class", insert "(including a class from which no  
4 effective promotional opportunities exist)";

5 (B) In subsection (d)(2), immediately after  
6 "case", insert "except when necessary to attain eligi-  
7 bility for an immediate annuity under chapter 8".

8 (3) Section 609, relating to retirement benefits, is  
9 amended as follows:

10 (A) Subsection (a) is amended to read as follows:

11 "(a) A member of the Service who is retired  
12 under section 607(c) or 608(b) --

13 "(1) after becoming eligible for volun-  
14 tary retirement under section 811, or

15 "(2) from the Senior Foreign Service or  
16 class 1 in the Foreign Service Schedule,  
17 shall receive retirement benefits in  
18 accordance with section 806.";

19 (B) Subsection (b) is amended by striking out  
20 "607(c)(1)" and inserting in lieu thereof "607(c)".

21 (4) Section 610(a)(2), relating to separation for  
22 cause, is amended by adding at the end thereof the follow-  
23 ing new sentence:

24 "Sections 1107(b)(5) and 1110 shall also apply to pro-  
25 ceedings under this paragraph.".

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FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 6. (a) Chapter 8 of title I of the Foreign Service Act of 1980 is amended as follows:

(1) Section 804(6), relating to definitions, is amended by inserting immediately after "10 years", the phrase "(including at least one day while the participant was making contributions for current service to the Fund)".

(2) Section 805, relating to contributions to the Fund, is amended as follows:

(A) In subsection (d)(1) --

(i) strike out "equal to" and insert in lieu thereof a period and "Special contributions for purposes of subparagraph (A) shall equal", and

(ii) at the end thereof add the following new sentence:

"Special contributions for prior refunds under subparagraph (B) shall equal the amount of the prior refund received by the participant.";

(B) In subsection (d)(3), strike out all after the first sentence and insert in lieu thereof --

"With respect to contributions for civilian service performed or refunds for which application is received by the Department prior to (effective date sec. 1 of Order), interest shall be com-

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1                   pounded at the annual rate of 4 percent to Decem-  
2                   ber 31, 1976, and 3 percent thereafter. With  
3                   respect to contributions for civilian service  
4                   performed, or refunds for which application is  
5                   received by the Department on or after (effective  
6                   date of sec 1 of Order), and with respect to de-  
7                   posits for all military and naval service on  
8                   which interest is due under section 805(e)(2),  
9                   interest shall be compounded annually at 3  
10                  percent to December 31, 1984, and thereafter for  
11                  any calendar year at a rate equal to the overall  
12                  average yield to the Fund during the preceding  
13                  fiscal year from all obligations purchased by the  
14                  Secretary of the Treasury during such fiscal year  
15                  under section 819 as determined by the Secretary  
16                  of the Treasury. No interest shall be charged on  
17                  special contributions for any period of separ-  
18                  ation from Government service which began before  
19                  October 1, 1956. Special contributions may be  
20                  paid in installments (including by allotment of  
21                  pay) when authorized by the Secretary of State.";  
22                  (C) Redesignate current subsections (e) and (f)  
23                  as (f) and (g), respectively, and insert a new sub-  
24                  section (e) to read as follows:

25                         "(e)(1) Each participant who has performed



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1 military or naval service before the date of the  
2 separation on which the entitlement to any annui-  
3 ty under this chapter is based may pay to the  
4 Secretary a special contribution equal to 7 per-  
5 cent of the amount of the basic pay paid under  
6 section 204 of title 37, United States Code, to  
7 the participant for each period of military or  
8 naval service after December, 1956. The amount  
9 of each payment shall be based on such evidence  
10 of basic pay for military service as the partici-  
11 pant may provide or, if the Department determines  
12 sufficient evidence has not been so provided to  
13 adequately determine basic pay for military or  
14 naval service, such payment shall be based upon  
15 estimates of such basic pay provided to the  
16 Department under paragraph (4).

17 "(2) Any contribution made under paragraph  
18 (1) of this subsection more than two years after  
19 the later of--

20 "(A) (date of approval of Order), or

21 "(B) the date on which the participant  
22 making the contribution first becomes a Fed-  
23 eral employee,

24 shall include interest on such amount computed  
25 and compounded annually beginning on the date of

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1 the expiration of the two year period. The  
2 interest rate that is applicable in computing  
3 interest in any year under this paragraph shall  
4 be equal to the interest rate that is applicable  
5 for such year under subsection (d).

6 "(3) Any payment received by the Secretary  
7 under this subsection shall be remitted to the  
8 Fund.

9 "(4) The Secretary of Defense, the Secre-  
10 tary of Transportation, the Secretary of Com-  
11 merce, or the Secretary of Health and Human Serv-  
12 ices, as appropriate, shall furnish such infor-  
13 mation to the Secretary as the Secretary may de-  
14 termine to be necessary for the administration of  
15 this subsection.";

16 (D) Subsection (f) is amended to read as follows:

17 "(f) Contributions shall not be required  
18 for any period of military and naval service ex-  
19 cept to the extent provided under section 805(e)  
20 or section 816(a), or for any period for which  
21 credit is allowed to individuals of Japanese an-  
22 cestry under section 816 for periods of intern-  
23 ment during World War II."

24 (3) Section 806, relating to computation and election  
25 of annuities and survivor annuities is amended as follows:

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(A) Subsection (a) is amended by inserting in the last sentence, immediately after "service" the first time it appears, "performed prior to (effective date of section 1 of order)";

(B) Subsection (b) (1) (C) is amended as follows:

(i) insert, immediately after "waive", the words "or reduce";

(ii) strike out "(i)"; and

(iii) strike out all after "final" and

insert in lieu thereof a period;

*Ask Paul  
C. this*

(C) Subsection (b) (1) (D) is repealed.

(4) Subsection 807(a), relating to payment of annuity, is amended to read as follows:

"(a) (1) Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after--

"(A) separation from the Service occurs; or

"(B) pay ceases and the service and age requirements for entitlement to annuity are met.

"(2) The annuity of--


"(A) a participant who is retired and is eligible for benefits under section 609(a) or a participant who is retired under section 813 or is otherwise involuntarily separated from the

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1 Service, except by removal for cause on charges  
2 of misconduct or delinquency,

3 "(B) a participant retiring under section  
4 808 due to a disability, and

5 "(C) A participant who serves 3 days or  
6 less in the month of retirement, shall commence  
7 on the day after separation from the Service or  
8 the day after pay ceases and the requirements for  
9 entitlement to annuity are met."

10 (5) Section 808, relating to retirement for disability  
11 or incapacity, is amended in subsections (a) and (b) by  
12 striking out "65" each time it appears and inserting in   
13 lieu thereof "60".

14 (6) Section 809, relating to death in service, is  
15 amended as follows:

16 (A) Subsection (e) is amended by striking out  
17 "65" and inserting in lieu thereof "60"; and

18 (B) Subsection (h) is amended by striking out  
19 "(b)(4)" and inserting in lieu thereof "(b)(3)(C)".

20 (7) Section 810, relating to discontinued service re-  
21 tirement, is amended to read as follows:

22 "SEC. 810 DISCONTINUED SERVICE RETIREMENT. -- Any  
23 participant who voluntarily separates from the Service  
24 after obtaining at least 5 years of service credit to-  
25 ward retirement under the System (excluding military

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1 and naval service) is eligible for a discontinued  
2 service annuity commencing the first day of the month  
3 following the month he or she reaches age 60, unless  
4 the individual withdraws his or her contributions to  
5 the Fund before attaining eligibility for commencement  
6 of an annuity under this section. Alternatively, such  
7 an individual may withdraw, pursuant to section 815,  
8 his or her contributions to the Fund."

9 (8) Section 811, relating to voluntary retirement, is  
10 amended by adding at the end thereof the following new sen-  
11 tence:

12 "The Secretary shall withhold consent for retirement  
13 under this section by any participant who has not been  
14 a member of the Service for 5 years except in extra-  
15 ordinary circumstances prescribed in regulations of  
16 the Secretary of State."

17 (9) Section 814(a), relating to former spouses, is  
18 amended as follows:

19 (A) In paragraph (3), strike out "on the first  
20 day of the month" and insert in lieu thereof "or the  
21 first day of the month following the month";

22 (B) In paragraph (4), immediately after "final",  
23 insert "unless it is issued in recognition of a sub-  
24 stantial change in the economic circumstances of eith-  
25 er party".

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1           (10). Section 815, relating to lump-sum payments, is  
2 amended as follows:

3           (A) Subsection (a) is amended to read as follows:

4           "(a)(1) A participant is entitled to be.  
5 paid the lump-sum credit if he or she--

6           "(A) is separated from the Service for  
7 at least thirty-one consecutive days, or is  
8 transferred to a position in which he is not  
9 subject to this chapter and remains in such  
10 a position for at least thirty-one consecu-  
11 tive days;

12           "(B) files an application with the Sec-  
13 retary for payment of the lump-sum credit;

14           "(C) is not reemployed in a position in  
15 which he or she is subject to this chapter  
16 at the time he or she files the application;  
17 and

18           "(D) will not become eligible to re-  
19 ceive an annuity within thirty-one days  
20 after filing the application.

21           Payment of the lump-sum credit voids all annuity  
22 rights under this chapter based on the service on  
23 which the lump-sum credit is based, until the  
24 participant is reemployed in the Service subject  
25 to this chapter.

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1           "(2) Whenever a participant becomes entitled  
2           to be paid under subsection (a)(1), the lump-sum  
3           credit shall be paid to the participant and to  
4           any former spouse (who has not remarried prior to  
5           age 60) of the participant in accordance with  
6           subsection (i) and to any spouse to whom the par-  
7           ticipant was married on the date of the separa-  
8           tion from the Service, which separation forms the  
9           basis for the payment, in accordance with subsec-  
10          tion (j).";

11           (B) At the end thereof, add a new subsection (j)  
12          to read as follows:

13           "(j)(1) If a written request by either the  
14           participant (or former participant) or the spouse  
15           is received by the Secretary of State no later  
16           than 15 days after the later of--

17                   "(A) the effective date of the separa-  
18                   tion; or

19                   "(B) the receipt of the refund applica-  
20                   tion by the Secretary of State,  
21           then, unless otherwise expressly provided by a  
22           any spousal agreement or court order under  
23           section 820(b), the amount of a participant's or  
24           former participant's lump-sum credit payable to a  
25           spouse of that participant shall be --

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1           "(i) if the spouse was married to the  
2 participant throughout the period of credit-  
3 able service of the participant, 50 percent  
4 of the lump-sum credit to which such parti-  
5 cipant would be entitled in the absence of  
6 this subsection, or

7           "(ii) if such spouse was not married to  
8 the participant throughout such creditable  
9 service, an amount equal to a pro rata share  
10 (calculated under section 804(10) as if the  
11 spouse were a former spouse) of 50 percent  
12 of such lump-sum credit.

13           "(2) The lump-sum credit of the participant  
14 shall be reduced by the amount of the lum-sum  
15 credit payable to the spouse."

16           (11) Section 816, relating to creditable service, is  
17 amended as follows:

18           (A) subsection (a) is amended to read as follows:

19           "(a)(1) Except as otherwise specified by  
20 law, there shall be creditable for purposes of  
21 this chapter all periods of civilian and military  
22 and naval service and all other periods through  
23 the date of final separation of a participant  
24 from the Service that the Secretary of State de-  
25 termines would be creditable toward retirement



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1 under the Civil Service Retirement and Disability  
2 System (as determined in accordance with section  
3 8332 of title 5, United States Code).

4 "(2) The service of an individual who first  
5 becomes a participant on or after (date Order  
6 approved) without any credit under section 816  
7 for civilian service performed prior to October  
8 1, 1982, shall include credit for:

9 "(A) each period of military and naval  
10 service performed before January 1, 1957, and

11 "(B) each period of military and naval  
12 service performed after December 31, 1956,  
13 and before the separation on which the en-  
14 titlement to annuity under this chapter is  
15 based, only if a deposit (with interest if  
16 any is required) is made with respect to  
17 that period, as provided in section 805(e).

18 "(3) The service of an individual who first  
19 became a participant on or after (date Order ap-  
20 proved) with credit under section 816 for civil-  
21 ian service performed prior to October 1982,  
22 shall include credit for each period of military  
23 or naval service performed before the date of the  
24 separation on which the entitlement to an annuity  
25 under this chapter is based, subject, in the case

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1 of military and naval service performed after  
2 December 19~~5~~6, to section 816(j).

3 "(4) The service of an individual who first  
4 became a participant before (date Order ap-  
5 proved), shall include credit for each period of  
6 military or naval service performed before the  
7 date of the separation on which the entitlement  
8 to an annuity under this chapter is based, sub-  
9 ject, in the case of military and naval service  
10 performed after December 1976, to section  
11 816(j).";

12 (B) Subsection (d) is amended by designating the  
13 current text as (d)(1) and adding at the end thereof a  
14 new paragraph (2) to read as follows:

15 "(2) Civilian service performed by a par-  
16 ticipant on or after (effective date of section 1  
17 of Executive Order) for which retirement deduc-  
18 tions or special contributions have not been made  
19 under section 805 may not be credited under this  
20 section unless no contribution is required for  
21 such service as provided under section 805(f) or  
22 under any other statute.";

23 *Former spous* (C) In subsection (i)(1), strike out subpara-  
24 graph (B) and insert in lieu thereof--

25 "(B) under subsection (d)(1) but for the

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fact that a refund of contributions has not been repaid unless the former spouse received a portion of the lump sum (or a spousal agreement or court order provided otherwise), and

"(C) under subsection (d)(2) but for the fact that a special contribution has not been made under section 805(d), and

"(D) under subsection (a)(2) but for the fact that a special contribution has not been made under section 805(e).";

*Unhealthy  
Post Credit*

(D) Subsection (i)(2) is amended to read as follows:

"(2) A former spouse shall not be considered as married to a participant for periods assumed to be creditable service under section 808(a) or section 809(e).";

(E) At the end thereof, add a new subsection (j) to read as follows:

"(j)(1) Except as otherwise provided by statute or Executive order, section 8332(j) of title 5, United States Code, relating to redetermination of credit for military and naval service, shall be applied to annuities payable under this chapter. The Secretary of State shall redetermine service, and may request and obtain

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1 information from the Secretary of Health and  
2 Human Services, as the Office of Personnel  
3 Management is directed or authorized to do in.  
4 such section 8332(j).

5 "(2) Section 8332(j) of Title 5, United  
6 States Code, shall not apply with respect to--

7 "(A) the service of any individual who  
8 first became a participant on or after (date  
9 of Order) without any credit under section  
10 816 for civilian service performed prior to  
11 October 1982; or

12 "(B) any military or naval service  
13 performed prior to 1957 by any individual  
14 who first became a participant on or after  
15 (date of Order) with credit under section  
16 816 for civilian service performed prior to  
17 October 1982, or any period of military or  
18 naval service performed after 1956 with  
19 respect to which the participant has made a  
20 contribution (with interest if any is re-  
21 quired) under section 805(e); or

22 "(C) any military or naval service  
23 performed prior to 1977 by any individual  
24 who first became a participant before (date  
25 of Order) or any period of military or naval

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1 service performed after 1976 with respect to  
 2 which the participant has made a contribution  
 3 (with interest if any is required) under section  
 4 805(e); or

5 "(D) any military or naval service  
 6 performed by a participant who has been  
 7 awarded retired pay on account of a service-  
 8 connected disability caused by an instru-  
 9 mentality of war and incurred in the line of  
 10 duty during a period of war as that term is  
 11 defined in section 301 of title 38, United  
 12 States Code."

*unhealthful  
 post credit  
 appl.  
 to former  
 spouse*

13 (12) Section 817, relating to extra credit for serv-  
 14 ice at unhealthful posts, is amended by adding, at the end  
 15 thereof, the following new sentence:

16 "Such extra credit shall not be used to determine the  
 17 eligibility of a person to qualify as a former spouse  
 18 under section 804(6), or to compute the pro rata share  
 19 under section 804(10)."

20 (13) Section 822(a), relating to unfunded liability  
 21 obligations, is amended by changing the final period to a  
 22 comma and adding the following:

23 "less an amount determined by the Secretary of State  
 24 to be appropriate to reflect the value of the deposits  
 25 made to the credit of the Fund under section 805(e).".

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1           (14) Section 826, relating to cost of living adjust-  
2           ments in annuities, is amended as follows:

3                   (A) Subsection (c)(1) is amended to read as fol-  
4           lows:

5                           "(c)(1) The first increase (if any) made  
6                           under this section to an annuity which is payable  
7                           from the Fund to a participant or to the surviv-  
8                           ing spouse or former spouse of a deceased parti-  
9                           cipant who dies in service or a deceased annui-  
10                          tant whose annuity has not been increased under  
11                          this section, shall be equal to the product (ad-  
12                          justed to the nearest 1/10 of 1 percent) of --

13                           "(A) 1/12 of the applicable percent  
14                           change computed under subsection (b) of this  
15                           section multiplied by

16                           "(B) the number of months (counting  
17                           any portion of a month as a month) --

18                                   "(i) for which the annuity was  
19                                   payable from the Fund before the  
20                                   effective date of the increase, or

21   "(ii) in the case of a surviving  
22   spouse or former spouse of a deceased  
23   annuitant whose annuity has not been so  
24   increased since the annuity was first  
25   payable to the deceased annuitant.";

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1 (B) Subsection (e) is amended by striking out  
2 "fixed at the nearest" and inserting in lieu thereof  
3 "rounded to the next lowest";

4 (C) At the end thereof, add a new subsection (g)  
5 to read as follows:

*Capping  
annuity  
adjustments*

6 "(g) (1) An annuity shall not be increased  
7 by reason of any adjustment under this section to  
8 an amount which exceeds the greater of--

9 "(A) the maximum salary rate payable  
10 for class 1 of the Foreign Service Schedule  
11 established under section 403 30 days before  
12 the effective date of the adjustment under  
13 this section; or

14 "(B) the final salary (or average sal-  
15 ary, if higher) of the former participant  
16 with respect to whom the annuity is paid,  
17 increased by the overall annual average per-  
18 centage adjustments (compounded) in rates of  
19 salary of such Foreign Service Schedule  
20 during the period--

21 "(i) beginning on the date the  
22 annuity commenced (or, in the case of a  
23 survivor of the retired participant,  
24 the date the participant's annuity  
25 commenced), and

26 "(ii) ending on the effective

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1 date of the adjustment under this  
2 section.

3 "(2) For the purposes of paragraph (1) of  
4 this subsection, 'salary' means the rate of sal-  
5 ary as payable under any provision of law, in-  
6 cluding any provision of law limiting the expend-  
7 iture of appropriated funds.

8 "(3) This subsection shall not cause any  
9 annuity to be reduced below the rate that is pay-  
10 able on the date of enactment of this subsection,  
11 but shall apply to any adjustment occurring on or  
12 after such date under this section to any annuity  
13 payable from the Fund, whether such annuity has a  
14 commencing date before, on, or after such date."

15 (15) Immediately after section 827, insert a new sec-  
16 tion 828 to read as follows:

17 "SEC. 828. MISSING SPOUSES AND FORMER SPOUSES.--

18 The Secretary of State may prescribe regulations under  
19 which a participant or former participant may make an  
20 election to waive or reduce a survivor annuity to a  
21 spouse or former spouse under section 806(b), and to  
22 wave or reduce a lump sum payment to a spouse or  
23 former spouse under section 815 without agreement of  
24 the participant's spouse or former spouse if the  
25 participant establishes to the satisfaction of the  
26 Secretary of State, after having taken all reasonable



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1        steps to determine the whereabouts of the spouse or  
2        former spouse, that the participant does not know the  
3        whereabouts. When the Secretary of State determines  
4        that a spouse or former spouse is missing during the  
5        time an annuity is payable to such missing spouse or  
6        former spouse under sections 806 or 814, the Secretary  
7        of State may by regulation provide for payment of such  
8        annuity to the former participant, if alive, or to a  
9        surviving spouse or surviving former spouse who is not  
10       missing.".

11       (b)(1) In addition to individuals who are participants in  
12       the Foreign Service Retirement and Disability System on the  
13       date of enactment of this Act, any former participant who re-  
14       tired after September 8, 1982, and before October 1, 1983, or  
15       who is entitled to an annuity under chapter 8 of the Foreign  
16       Service Act of 1980 based on a separation from the Service  
17       occurring during such period, or a survivor of such par-  
18       ticipant, may make a contribution under section 805(e) of such  
19       Act as amended by this Act.

20       (2) The amendment made by section 6(a)(8) of this Act to  
21       section 811 of the Foreign Service Act of 1980, relating to  
22       voluntary retirement, shall not apply to individuals who are  
23       participants in the System on the date of enactment of this Act.

24       (3) The amendments made by section 6(a)(14)(A) of this Act  
25       to section 826(c) of the Foreign Service Act of 1980, relating

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1 to cost-of-living adjustments of annuities, shall be made  
2 retroactively effective to August 13, 1981, and shall apply to  
3 annuities which commence before, on, or after such date.

#### 4 TRAVEL, LEAVE, AND OTHER BENEFITS

5 SEC. 7. Section 901 of the Foreign Service Act of 1980 is  
6 amended as follows:

7 (1) In paragraph (12) (B), immediately after "member  
8 and", insert a comma and "unless an extension is granted in  
9 extraordinary circumstances prescribed by regulation,".

10 (2) In paragraph (15), strike out "the port of entry  
11 in the contiguous 48 states which is nearest to that post"  
12 and insert in lieu thereof "Washington, D.C. This limita-  
13 tion shall not apply when both parents are members of the  
14 Service".

#### 15 LABOR-MANAGEMENT RELATIONS

16 SEC. 8. Chapter 10 of title I of the Foreign Service Act of  
17 1980 is amended as follows:

18 (1) Section 1002(12) (E), relating to definitions, is  
19 amended by inserting, immediately after "209", a comma and  
20 "or comparable investigation, inspection, or audit activ-  
21 ities in the other agencies to which this chapter is appli-  
22 cable under section 1003".

23 (2) Section 1014(a) (3), relating to resolution of im-  
24 plementation disputes, is amended by inserting, immediately  
25 after "appeal", a comma and "including cost-sharing

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1 arrangements,".

2 TRANSITION

3 SEC. 9. Chapter 1 of title II of the Foreign Service Act of  
4 1980 is amended as follows:

5 (1) Section 2104, relating to conversion from the For-  
6 eign Service, is amended by adding at the end thereof the  
7 following new subsection:

8 "(c) The 3-year period referred to in subsection  
9 (a) shall be extended for an additional 3 years in the case  
10 of members of the Service who were initially ineligible for  
11 conversion under that subsection because they were avail-  
12 able for worldwide assignment and there was a need for  
13 their services in the Foreign Service, but as to whom  
14 subsequent events require their services only or primarily  
15 for domestic functions.".

16 (2) Section 2106(e)(2), relating to preservation of  
17 status and benefits, is amended to read as follows:

18 "(2) who, immediately before the effective date  
19 of this Act, was not subject to section 633(a)(2) of  
20 the Foreign Service Act of 1946 or section 625(e) of  
21 the Foreign Assistance Act of 1961.".

22 EFFECTIVE DATE OF 1980 ACT

23 SEC. 10. Section 2403(c) of the Foreign Service Act of 1980  
24 is amended by striking out "until October 1, 1985. Prior to  
25 that date, the" and inserting in lieu thereof a period and the

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1 word "The".

2 AMENDMENTS TO OTHER LAWS

3 Sec. 11. Title I of the State Department Basic Authorities  
4 Act is amended as follows:

5 (1) Section 2 is amended as follows:

6 (A) The introductory clause is amended to read "The  
7 Secretary of State may --";

8 (B) Subsection (f) is amended by striking out "the  
9 first paragraph of";

10 (C) Section 2 is further amended by striking out "and"  
11 at the end of subsection (e), striking out the period at  
12 the end of subsection (f) and inserting in lieu thereof a  
13 semicolon, and adding at the end thereof the following new  
14 subsection:

15 "(g) Obtain services as authorized by section  
16 3109 of title 5, United States Code."

17 (2) Section 11 is amended to read as follows:

18 "Sec. 11. Funds appropriated to the Department of  
19 State shall be available for expenses of interna-  
20 tional arbitrations and other proceedings for the  
21 peaceful resolution of international disputes under  
22 treaties or other international agreements, and arbi-  
23 trations arising under contracts authorized by law for  
24 the performance of services or acquisition of property  
25 abroad."

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1       (3) Section 30(a)(2) is amended by striking out "the  
2       availability of such benefits precludes a remedy under such  
3       sections" and inserting in lieu thereof "a remedy under such  
4       sections is precluded, because of the availability of such  
5       benefits or otherwise".

6       (4) Section 32 is amended by adding at the end thereof the  
7       following new sentence:

8               "The authorities available to the Secretary of State  
9       under this section with respect to the Department of  
10       State shall be available to the Director of the United  
11       States Information Agency and the Director of the  
12       United States International Development Cooperation  
13       Agency with respect to their respective agencies.".

14               AMENDMENTS TO TITLE 5, UNITED STATES CODE

15       SEC. 12. Title 5 of the United States Code is amended as  
16       follows:

17               (1) Section 5551(a), relating to lump-sum payment for  
18       accumulated and accrued leave on separation, is amended by  
19       striking out "pay" in the second sentence and inserting in  
20       lieu thereof "basic pay".

21               (2) Section 5724(a)(3), relating to travel and trans-  
22       portation expenses of employees, is amended --

23                       (A) By striking out the period at the end of the  
24       second sentence and inserting in lieu thereof a comma  
25       and "or from a post in a foreign area.";

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1 (B) By inserting, immediately after "maximum per  
2 diem" in the third sentence, "or high rate geograph-  
3 ical area".

4 (3) Section 5725(a), relating to transportation ex-  
5 penses of family members, is amended by striking out "Gov-  
6 ernment" in the first sentence and inserting in lieu there-  
7 of "or when a separate maintenance allowance has otherwise  
8 been granted under section 5924(3) of this title, Govern-  
9 ment".

10 (4) Section 5922(b), relating to general provisions,  
11 is amended by inserting, immediately after "Allowances",  
12 the words "and differentials".

13 (5) Section 5924(4), relating to education allow-  
14 ances, is amended as follows:

15 (A) In the introduction, immediately after "for-  
16 eign areas", insert a comma and "or official assign-  
17 ment to serve in such area or areas,".

18 (B) In paragraph (A), strike out "kindergarten"  
19 and insert in lieu thereof "pre-kindergarten for  
20 handicapped children, kindergarten".

21 (C) In paragraph (B), strike out "undergraduate  
22 college" each time it appears and insert in lieu  
23 thereof "post-secondary educational institution".

24 (6) Section 5944, relating to burial and last illness  
25 expenses of native employees in foreign countries, is re-  
26 pealed.

Foreign Service Act Amendments of 1983:  
Sectional Analysis

Section 2: "HATCHING" THE INSPECTOR GENERAL AND THE  
DIRECTOR GENERAL (F.S. Act Sec. 208/209)

These amendments would bring the Inspector General of the Foreign Service and the Department of State and the Director General of the Foreign Service under provisions of the Hatch Act, thus prohibiting their participation in certain partisan political activities. Both officers are presently exempt from the Hatch Act because they are appointed by the President with the advice and consent of the Senate. Other Inspectors General are already covered. The Director General is required to be a career member of the Senior Foreign Service. Accordingly, it seems appropriate to emphasize the nonpolitical nature of the incumbents' responsibilities.

Section 3(1): FIVE PERCENT LIMITATION ON NON-CAREER MEMBERS OF THE  
SENIOR FOREIGN SERVICE (F.S. Act Sec. 305(b))

Section 305 of the Act now provides that career government employees who are members of the Senior Executive Service are not to be counted against the 5% limit on non-career membership in the Senior Foreign Service. Most senior career government officials appointed to limited appointments in the SFS, with reemployment rights to their career status, will in fact come from the SES. In rare cases, however, it will be desirable to appoint a non-SES career employee to an SFS limited appointment (for example, a scientific supergrade appointed under P.L.-313, or a member of one of the parallel services such as the Senior Intelligence Service). This amendment carries out the purpose of the existing law, which is to exempt career government officials from being counted against the non-career ceiling.

Section 3(2): EXCLUSIONS FROM 5 YEAR LIMIT  
ON LIMITED APPOINTMENTS (F.S. Act Sec. 309)

This amendment would correct inadvertent omissions in the original text of Section 309 and would consolidate in a single section all exceptions to the 5 year limitation on the duration of limited appointments. Exceptions are provided in order to avoid interruption of a current assignment, for service as a consular agent, for employment as a family member, and for continued service as a career candidate when a grievance is pending. Consular agents perform consular and related services in locations where there are no Foreign Service posts, and it is highly desirable to retain their services for an indefinite period of time, if their performance

is satisfactory. They cannot be career members of the Foreign Service, either because they are Foreign nationals, or because they are available for service only in one locality. Career candidates serving on limited appointments sometimes contest decisions not to grant them career status before the expiration of the maximum 5 year period for such appointments. The amendment would clarify the Department's authority to extend the candidate's appointment in such a case, if ordered by the Foreign Service Grievance Board, or if deemed necessary administratively to provide an equitable chance for career consideration. The exception for family members is already provided by existing law, but is consolidated here with other exceptions for convenient reference. The exception to permit completion of a current assignment is intended to promote greater efficiency in the assignment of individuals serving under limited appointments. It is expected that the need to use this authority will arise rarely.

Section 4(1): SALARIES FOR CHIEFS OF MISSION  
(F.S. Act Sec. 401(a))

This amendment would make clear that only those individuals appointed by the President and confirmed by the Senate are to receive the salary of a Chief of Mission. Members of the Service assigned to perform the functions of a Chief of Mission, for example, as the head of a U.S. Interests Section or as a charge d'affaires, would remain eligible for a salary differential under Section 411 of the Act, but would not receive the statutory salary of an Ambassador.

Section 4(2): ELIGIBILITY FOR WITHIN GRADE SALARY INCREASES  
(F.S. Act Sec. 406(a))

Section 406(a) is currently more specific than other Federal pay legislation in setting periods of time required in a given step before a member of the Foreign Service is eligible for an increase. More general language would permit regulations to be promulgated dealing with a number of special circumstances, such as meritorious step increases, leave without pay, part-time employment, step increases after the expiration of time-in-class, and the allowable rate of advancement from step to step.

1/13/83



Section 4(3): PROVIDENT FUNDS FOR FOREIGN NATIONAL EMPLOYEES  
(F.S. Act Sec. 408)

This amendment would clarify the Secretary's authority to establish provident funds in countries where this is in accordance with local practice. A provident fund is used in lieu of a life-certain annuity as a retirement benefit in many countries. Basically, a provident fund is made up of the deposits of a specified percentage of an employee's salary by the employer and the employee. Upon termination of employment for retirement or other reasons, an employee receives the cumulative deposits plus interest as a lump-sum, rather than being paid a periodic annuity for life. This amendment is consistent with the intention of section 408, which calls for following local practice when feasible in compensating Foreign Service National employees.

Section 4(4): ON-CALL PAY (F.S. Act Sec. 414)

This proposed new section would authorize special pay for Foreign Service personnel (except the Senior Foreign Service and Foreign Service officers) required to remain on-call while abroad, which would not preclude overtime pay for periods actually worked. Special pay would equal 10 percent of the overtime pay rate, which is the same as paid to Veteran's Administration nurses under a comparable provision found in 38 U.S.C. 4107(e)(8). This would replace the current system, under which an individual must either be on-call, with no pay but eligible to receive overtime pay only when actually called in, or in standby status, where compensation for the individual is possible, but he or she is confined to duty station or quarters, and is ineligible to receive overtime pay during the standby period even if called to work. The current system is unwieldy, and requires confinement to quarters when this is not operationally necessary, in order to qualify a member for the special compensation for the extra duty.

Section 5(1): INELIGIBILITY FOR PROMOTION AFTER EXPIRATION OF  
TIME-IN-CLASS (F.S. Act Sec. 601(b))

In certain cases, members of the Foreign Service are allowed to remain beyond expiration of their time-in-class, normally for humanitarian reasons to allow them to qualify for an immediate annuity. (Individuals at the FS-1 level and higher are eligible for such an annuity at expiration of time-in-class under section 609, but those at FS-2 and lower are not.) This amendment would insure that individuals retained for this purpose are not eligible for promotion. If they were allowed to compete for promotion, then time-in-class rules would become meaningless.

1/13/83

Section 5(2): LIMITED CAREER EXTENSIONS BELOW THE HIGHEST CLASS  
IN AN OCCUPATION/RETENTION AFTER EXPIRATION OF TIC TO  
GAIN ELIGIBILITY FOR AN IMMEDIATE ANNUITY  
(F.S. Act Sec. 607(b)(1) and 607(d)(2))

The current law permits Limited Career Extensions (LCEs) when individuals have attained the highest salary class for their occupation categories except in the Senior Foreign Service, in which case LCEs are available at each class level. It is now clear that such a restriction below the SFS level could lead to undesirable separations through expiration of time-in-class in categories where there are a very few positions at the highest possible class, so that most individuals could never expect to be promoted. This amendment would permit the Secretary to determine when this circumstance exists, and to authorize use of LCEs in classes below the most senior. The second part of the amendment would clarify the authority of the Secretary to retain individuals below the FS-1 level after their TIC has expired, in order to allow them to qualify for an immediate annuity.

Section 5(3): RETIREMENT BENEFITS/SEVERANCE PAY FOR INDIVIDUALS  
SEPARATED FROM THE SERVICE AFTER EXPIRATION OF  
TIC OR FAILURE TO HAVE A LIMITED CAREER EXTENSION  
RENEWED (F.S. Act Sec. 609)

This amendment modifies the existing language of section 609 to avoid an anomaly which would otherwise be created by the adoption of Section 5(2) above. Without this amendment, an individual leaving the service from class FS-2 or below for expiration of time in class would receive severance pay, while one at the same levels leaving for expiration of a limited career extension without renewal would be entitled to an immediate annuity. The two situations should be treated the same. The amendment would conform the two cases, and follow the existing practice, first legislated in 1946, that those separated involuntarily from class FS-1 or higher receive an immediate annuity, while those separated involuntarily from classes FS-2 and lower receive severance pay.

Section 5(4): ATTORNEYS' FEES IN SEPARATION FOR CAUSE CASES  
(F.S. Act Sec. 610(a)(2))

Section 610 which provides for separation for cause, applies the grievance hearing procedures of section 1106 to separation hearings, but it does not now provide expressly for payment of attorneys' fees or for judicial review (sections 1107(b)(5) and 1110 of the Act, respectively). This amendment would extend those two provisions to separation proceedings.

1/13/83

Section 6(a)(1): DEFINITION OF FORMER SPOUSE  
(F.S. Act Sec. 804(6))

The Act now requires only 10 years of marriage during any period of Federal Government service. Thus an employee who has a former spouse at time of transfer from Civil Service to Foreign Service could be affected, even where the 10 years of marriage do not include even one day while the participant was in the Foreign Service. This amendment would require that there be at least one day of marriage while one of the partners was a participant in the Foreign Service Retirement System in order to qualify for benefits as a former spouse under that System.

Our Act explicitly req. 10 yrs. of marriage. This is pertinent.

Section 6(a)(2)(A): REPAYMENT OF REFUNDS  
(F.S. Act Sec. 805(d)(1))

This amendment simplifies the calculation of the amount owing by a member for a previous refund of contributions from the Foreign Service Retirement and Disability System (FSRDS) or from any other retirement system for Government employees. Such refunds must be repaid by a member in order to obtain any credit for the prior service. At present, amounts owing for such refunds are determined by taking into account the differing contribution rates previously in effect under the FSRDS during the period covered by the refund. This rate at different times has been both higher and lower than the corresponding rate in the Civil Service Retirement and Disability System (CSRDS). The proposed change would adopt the current CSRDS formula expressed in 5 U.S.C. 8334(d) under which the amount owing is simply the amount of the previous refund plus interest.

I don't know if this is a problem - ask Adele

CIARDS conforms with CSRDS § 252(b)

Section 6(a)(2)(B): INTEREST RATES ON CONTRIBUTIONS TO FUND  
(F.S. Act Sec. 805(d)(3))

This amendment conforms the rate of interest charged on contributions to the Fund under the Foreign Service Retirement and Disability System (FSRDS) to the new rate mandated by sections 303(a)(1) and (d)(1) of the Omnibus Reconciliation Act of 1982 (ORA) as amended by sections 3(c) and (j)(1) of P.L. 97-346 on similar deposits under the Civil Service Retirement System (CSRS). The rate for calendar 1985 and thereafter will equal the average yield to the Fund for the previous fiscal year as determined by the Secretary of Treasury.

Does CIARDS have this problem - ask Karen, Anne & Adele.

no. per CIARDS § 252(b)(4)

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Section 6(a)(2)(C): CONTRIBUTIONS FOR MILITARY SERVICE  
(F.S. Act Sec. 805(e))

STAT

This section redesignates subsections (e) and (f) of section 805 of the Foreign Service Act of 1980 (hereafter, the Act) and inserts a new subsection (e). The new subsection authorizes contributions to the Fund for prior military and naval service in conformance with changes made in CSRS by section 306(d) of ORA as amended by sections 3(a) and (3)(e)(1) of P.L. 97-346.

Section 6(a)(2)(D): CONTRIBUTIONS FOR MILITARY SERVICE  
(F.S. Act Sec. 805(f))

This amendment conforms subsection 805(f) of the Act as redesignated by section 6(a)(2)(C) with new subsection 805(e) of the Act. It is similar to the change made by section 306(e) of the ORA.

Section 6(a)(3)(A): CONTRIBUTIONS FOR CIVILIAN SERVICE  
(F.S. Act (Sec. 806(a))

This amendment coupled with the amendment of section 816(d) of the Act by section 6(a)(11)(B) requires that contributions to the Fund must be made by a participant in order to obtain credit for service performed in the future for which no contributions were made concurrently. The old rule that an annuity is reduced by 10 percent of the amount owing for such prior service will apply only for service performed prior to (effective date of section 1 of Order). This change is similar to the change in the CSRS made by section 303(b) of ORA.

Section 6(a)(3)(B)(1): ELECTION OF SURVIVOR ANNUITY  
(F.S. Act Sec. 806(b)(1)(C))

This change would permit a member and former spouse to elect a spousal agreement a (reduced) survivor annuity. At present they must elect either the maximum survivor annuity or none. This change would also permit such an agreement to be entered into within 12 months after a divorce in the event a divorce occurs after the member's retirement. At present, such elections cannot be made after retirement despite the changed circumstances and desires of the parties.

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## Section 6(a)(3)(B)(2): MISSING PERSONS (F.S. Act Sec. 806(b)(1)(D))

This amendment deletes section 806(b)(1)(D) of the Act because <sup>no</sup> it is encompassed by the broader treatment of the subject of <sup>obj.</sup> missing spouses and former spouses in new section 828 of the Act that would be added by section 6(a)(15).

## Section 6(a)(4): LATER COMMENCEMENT DATE FOR CERTAIN ANNUITY (F.S. Act Sec. 807(a))

This amendment would delay the effective date of annuity for those retiring voluntarily with more than 3 days of service the month of retirement from the day after separation to the first day of the month following separation. It would also delay the effective date of deferred annuities to the first of the month after age and service requirements for title to annuity are met. It corresponds to the change in the CSRS made by section 305(a) of ORA and section 124 of P.L. 97-377.

## Sections 6(a)(5) and (6)(a)(6)(A): AGE REQUIREMENT FOR MINIMUM ANNUITY AND DISABILITY EXAMINATION (F.S. Act Secs. 808(a) AND (b), 809(e))

⇒ Sections 808(a) and 809(e) of the Act fix the minimum disability and survivor annuity, respectively, for members who become disabled or who die in service. The minimums are currently based on assumed service to 65, or to a total of 20 years whichever is less.

These amendments would change the specified age to 60 instead of 65 to conform with 5 U.S.C. 8339(g) and 8341(d).

*Computation of annuity for disability ret. ann.*  
Section 808(b) of the Act requires a disability annuitant whose disability has (not) been declared permanent by the Office of Medical Services to undergo an annual physical examination up to the age of 65. This change would (reduce) the age to 60 and consequently reduce the number of such examinations. This amendment would conform with 5 U.S.C. 8337(c).

## Section 6(a)(6)(B): CORRECTION OF REFERENCE (F.S. Act Sec. 809(h))

This amendment would correct a reference in section 809(h) of the Act.

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## Section 6(a)(7): DEFERRED ANNUITIES (F.S. Act Sec. 810)

STAT

This amendment conforms section 810 of the Act to the amendment made by section 6(a)(4) concerning the effective date of annuities and 6(a)(10)(A) imposing certain restrictions on the withdrawal of contributions by participants who resign.

STAT

## Section 6(a)(8): VOLUNTARY RETIREMENT (F.S. Act Sec. 811)

⇒ This amendment would require members to complete 5 years under the PSRS before becoming eligible for voluntary retirement at age 50 after 20 years creditable service. the 1980 Act, a requirement was imposed that a member have at least 5 years of civilian service credit in order to retire voluntarily in order to prevent those with extensive military service from entering the Service and retiring in less than 5 years. This amendment will impose a comparable requirement for those with extensive service under CSRS. The change will be made applicable only to those who enter the Service after enactment of the Act (see effective date section 6(b)(2)).

STAT

## Section 6(a)(9)(A): EFFECTIVE DATE OF PENSION TO FORMER SPOUSE (F.S. Act Sec. 814(a)(3))

⇒ The first change--insertion of the word "or"--is purely to clarify the original intent. The change of effective pension payments to a former spouse to first of month (for divorce from first of month in which divorce occurs would reduce potential for overpayments and provide consistency with the effective date for changes in survivorship reductions stated in sections 806(i) and 814(b)(5)(A) of the Act. It would eliminate the need to make two successive annuity recomputations when a divorce occurs after retirement--one adjustment to provide a pension to the former spouse and another adjustment the next month to adjust the survivorship reduction.

STAT

## Section 6(a)(9)(B): COURT ORDERED CHANGES (F.S. Act Sec. 814(a)(4))

⇒ This amendment would permit a court, irrespective of the divorce, to order a change in the percentage of a member's annuity which is payable to a former spouse provided the court finds that a substantial change in the economic circumstances of at least one party has occurred. At present, court orders affecting annuity payments issued more than 12 months following a divorce are not valid. The proposed change is consistent with the philosophy of the Act which allows a court to set aside the "pro rata" division stated in section 814 of the Act when individual circumstances so dictate.

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Section 6(a)(10)(A): REFUNDS OF CONTRIBUTIONS  
(F.S. Act Sec. 815(a))

STAT

This amendment divides section 815(a) of the Act into two paragraphs. New paragraph (1) requires that members be separated from the Service for at least 31 consecutive day and meet related requirements to be eligible for a refund their contributions to the Fund. It conforms the FSRDS with the change made in CSRS by section 303(c) of ORA as amended by section 3(f) of P.L. 97-346.

New paragraph (2) of section 815(a) would correct an apparent oversight in the 1980 Act by eliminating the right of a former spouse who remarries prior to age 60 to a share of lump-sum payment, just as rights to an annuity are cut off in such circumstances. Also, this paragraph, coupled with new section 815(j) of the Act to be added by section 6(a)(10)(B) would provide a spouse who so requests a pro rata share of any refund of retirement contributions on resignation, unless waived by a spousal agreement, or a court ordered otherwise. It would provide a spouse the same right to share in refund on resignation of a Member as section 806(b) now provides with respect to a survivor annuity upon retirement of a Member. It would protect a spouse in the event a Member leaves the Service prior to divorce in order to avoid payment to a former spouse required by the Foreign Service Act. In the event a Member has both a spouse and former spouse when a refund becomes payable, each would receive a pro rata share of 50% of the refund, and the Member would receive the other 50% plus any balance of the first 50% not included in a "pro rata share".

Section 6(a)(10)(B): DIVISION OF REFUNDS WITH SPOUSES ON  
REQUEST (F.S. Act Sec. 815(j))

This amendment is explained under section 6(a)(10)(A).

Section 6(a)(11)(A): CREDIT FOR MILITARY SERVICE  
(F.S. Act Sec. 816(a))

STAT

This amendment revises the rules for crediting prior military service toward Foreign Service retirement. It conforms the FSRDS with the changes in CSRS made by section 306(b) of ORA as revised by sections 3(a) and (b) of P.L. 97-346.

This change was made effective \_\_\_\_\_ (date) by Executive order \_\_\_\_\_ (number). Individuals who first become

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participants on or after such date generally will not receive credit for military or naval service toward a Foreign Service annuity unless the member deposits in the Fund an amount equal to 7 percent of estimated military base pay. If the member makes a deposit, he/she will be entitled to credit under both the Foreign Service and social security systems. A member has a two-year grace period after employment begins during which no interest will be applied to amounts which are deposited. Amounts deposited after the two-year period are subject to interest at an annual interest rate equal to the yield on new retirement fund investments. The so-called "Catch-62" reduction in Foreign Service annuity will not be made for such retirees, i.e. Foreign Service annuity will not be reduced at age 62 to eliminate military service credit from the Foreign Service annuity.

Since individuals under the Civil Service retirement system prior to October 1982 retain a right to remain under the "Catch-62" provision and thus avoid making a deposit for their military service performed after 1956, new subsection 816(a)(3) is added to preserve this right for those who transfer to the Foreign Service after \_\_\_\_\_, the effective date of this new procedure for crediting military service under the Foreign Service retirement system.

Members first employed before the effective date will also be given an opportunity to make a deposit to the Fund to cover military service. If they do, they will also be entitled to credit under both the Foreign Service and social security systems and will avoid a "Catch-62" reduction. These members will also have a 2-year grace period to make deposits without interest. If they choose not to make a deposit, they would continue to be subject to the "Catch-62" reduction.

The "Catch-62" provision was not made applicable to FSRDS until January 1, 1977. Accordingly current members do not have their Foreign Service annuities reduced at age 62 to exclude credit for pre 1977 military service. This amendment will not change this rule for these current members and they will not be required to make a deposit for their pre 1977 military service. However, those who become participants after the effective date will be required to make a deposit for their post 1956 military service in order to obtain Foreign Service retirement credit for the service, with the exception described above for those with credit for civilian service performed prior to October 1982. Different rules apply to those entitled to annuities on the effective date. Those rules are stated in Executive order No. \_\_\_\_\_ and conform with section 307 of ORA as amended by section 3(k) of P.L. 97-346.

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Under the new rules, upon reaching age 62, current annuitants will not have their Foreign Service annuities recomputed to remove credit for military service as in the past. Rather, their Foreign Service annuity will be reduced by an amount proportionate to their Social Security benefits for military service. However, in no case will an individual receive less than the amount he would receive or is receiving had he remained subject to the "Catch-62" reduction. Foreign Service annuitants who are age 62 or over on the effective date will have their annuities recomputed in the same manner as described above.

Section 6(a)(11)(B): CONTRIBUTIONS FOR PRIOR CIVILIAN SERVICE  
(F.S. Act Sec. 816(d))

This amendment conforms with the one made by section 6(a)(3)(A) and is explained under that section.

Section 6(a)(11)(C): BENEFITS TO SPOUSES AND FORMER SPOUSES  
(F.S. Act Sec. 816(i)(1))

This amendment revises subparagraph (B) of section 816(i)(1) of the Act and adds subparagraphs (C) and (D).

The amendment of subparagraph (B) will assure that computation of benefits to former spouses will be the same irrespective of whether a spouse or former spouse received a portion of a prior refund under the Foreign Service, Civil Service or other retirement system.

STAT

New subparagraphs (C) and (D) establish rules for apportioning retirement annuities between a retiree and former spouse in the event a special contribution is not made for prior nondeposit civilian service or for military service. The rules are similar to those established in 1980 for failure to redeposit prior refunds.

Section 6(a)(11)(D): UNHEALTHFUL POST CREDIT--APPLICATION TO FORMER SPOUSES-I (F.S. Act Sec. 816(i)(2))

This amendment deletes current subparagraph (B) of section 816 (i)(2) of the Act which relates to unhealthful post credit. The amendment is explained under section 6(a)(12).

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Section 6(a)(11)(E): APPLICATION OF "CATCH-62" (5 U.S.C. 8332(j)) (F.S. Act Sec. 816(j))

STAT

This amendment adds a new subsection (j) to section 816 of the Act to explain the application of 5 U.S.C. 8332(j) (the Catch-62 provision) to FSRDS. The last sentence of current section 816(a) of the Act makes this provision applicable. Because of complexities added by ORA, that sentence is being repealed by section 6(a)(11)(A). New subsection (j) conforms FSRDS with the change made in CSRS by section 306(c) of ORA as amended by section 3 (a) of P.L. 97-346.

Section 6(a)(12): UNHEALTHFUL POST CREDIT--APPLICATION TO FORMER SPOUSES-II (F.S. Act Sec. 817)

STAT

⇒ This amendment would eliminate extra service credit for assignments at unhealthful posts granted to members not receiving post differential or danger pay from computation of the 10 years of creditable service during which a marriage must have endured and from computations of the pro rata benefit. This would mean that a marriage must have endured during ten years of actual service to qualify a former spouse for benefits and that benefits would be based on actual Government service.

Currently, subparagraph (B) of section 816(i)(2), which would be repealed by section 6(a)(11)(D), makes it necessary for the Department to determine whether a spouse resided with a member at an unhealthful post, both before or after passage of the Act. This is almost impossible to determine for periods prior to institution of the special reports now required. The change would simplify administration of the Act without significantly affecting benefits.

STAT

Section 6(a)(13): UNFUNDED LIABILITY OBLIGATIONS (F.S. Act Sec. 822(a))

⇒ This amendment would revise section 822(a) of the Act to recognize income to the Fund provided by contributions from military service. The amendment is comparable to section 306(f) of ORA.

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STAT

Section 6(a)(14)(A): COST OF LIVING ADJUSTMENTS OF  
ANNUITIES (F.S. Act Sec. 826(c))

This amendment would conform cost-of-living adjustments in Foreign Service annuities with comparable adjustments in Civil Service annuities under 5 U.S.C. 8340 as amended by Budget Acts of December 5, 1980 and August 13, 1981 (P.L. 96-489 and P.L. 97-35, respectively). The former Act ended the "look-back" computation and provided for proration of the first adjustment. These changes were extended to the Foreign Service by Executive orders 12272 and 12289 of January 16, 1981 and February 14, 1981, respectively, except it was not possible to make the change applicable to former spouses by Executive order. This amendment is necessary to accomplish the latter. This amendment also changes the proration formula to conform with the change made by P.L. 97-35 effective August 13, 1981 and is made effective on the same date by section 6(b)(3).

STAT

Section 6(a)(14)(B): ROUNDING DOWN (F.S. Act Sec. 826(e))

This amendment provides for rounding annuities to the next lowest dollar instead of the nearest dollar. It is comparable to the change made by section 304(a) of ORA.

Section 6(a)(14)(C): CAPPING ANNUITY ADJUSTMENTS  
(F.S. Act Sec. 826(g))

This amendment adds a new subsection (g) to section 826 of Act. It provides that no Foreign Service annuity (including survivor annuities) may be increased as the result of a cost of living adjustment to an amount which exceeds the greater of (a) the maximum rate payable for class FS-1 (currently \$63,115) (b) the final pay (or average pay, if higher) of the member increased by the overall annual average percentage adjustments in the Foreign Service Schedule pay rates that have occurred between the date the member's annuity commenced and the date of the cost-of-living adjustment. The amendment is comparable to the change made by section 309 of ORA.

Section 6(a)(15): MISSING PERSONS (F.S. Act Sec. 828)

This amendment would add a new section 828 to the Act. It would expand current section 806(b)(1)(D) to cover additional types of elections when it is established that a spouse or former spouse

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is missing. It would also authorize payment of benefits otherwise due to the missing person to the participant, if alive, or to a spouse or other former spouse. Section 806(b)(1)(D) of the Act would be repealed by section 6(a)(3)(B)(2).

Section 6(b): EFFECTIVE DATES

Section 6(b)(1) authorizes former participants who retired between September 8, 1982 (the date ORA was enacted) and October 1, 1983 to make contributions for prior military service if it is to their advantage. This provision is similar to the authority granted by section 3(e)(2) of P.L. 97-346.

Section 6(b)(2) exempts current members from the application of the change in voluntary retirement made by section 6(a)(8) as is explained under that section.

Section 6(b)(3) makes the changes in section 826(c) of the Act, which provides for prorating initial annuity adjustments, retroactive to the date the formula was made applicable to CSRS.

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Section 7(1): STORAGE OF HOUSEHOLD EFFECTS  
(F.S. Act Sec. 901(12)(B))

The current provision contains an absolute limit of three months during which effects can be stored in conjunction with reassignment. This can work a hardship on members of the Service when, despite their best efforts, they have no residence to which to ship effects. This could occur, for example, in a case of medical evacuation from a post to a hospital in the United States, when the member may be physically unable to locate quarters, and it may not be known in any event how long the family will be remaining in the United States.

The parallel limitation of 3 months storage at the time of separation from the Service contained in section 901(12)(C) would remain in effect.

Section 7(2): TRAVEL FOR CHILDREN OF SEPARATED PARENTS  
(F.S. Act Sec. 901(15))

This amendment would change the maximum payment for this type of travel to the cost for travel between the employee's foreign post of assignment and Washington, D.C. The current limit is the cost between the employee's post and the nearest port of entry in the contiguous 48 states.

The current provision does not meet the objective stated in the legislative history, of paying the "international portion" of such travel in cases of tandem couples and others when the travel is between two foreign countries. For example, when the employee is in Bangkok and the child and other parent are in Paris, reimbursement under the current provision is limited to the cost for travel between Bangkok and Los Angeles, whereas the cost of the actual travel is much greater and would more nearly be met under the proposed limit of Bangkok/Washington. Given that most members of the Service in the U.S. are assigned to Washington, it seems fair to keep their expenses for child visitation the same when they are abroad as when in the U.S., to the extent administratively feasible.

When both parents are members of the Service and are serving at different locations at the direction of the Government, the second addition provides that payment under this paragraph shall be for post-to-post travel, without the limitation which would otherwise apply.

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Section 8(1): DESIGNATION OF INVESTIGATORS AND AUDITORS AS  
MANAGEMENT OFFICIALS FOR LABOR-MANAGEMENT  
PURPOSES (F.S. Act Sec. 1002(12))

The current section designates as management officials employees assigned to carry out the functions of the Inspector General of the Foreign Service and the Department of State as management officials. Through inadvertence, officials performing similar audit and investigatory functions in the other foreign affairs agencies were not included. Government-wide practice is to exclude such officials from the bargaining unit, on grounds they have a special relationship and responsibility to management.

Section 8(2): COST SHARING FOR INSTITUTIONAL GRIEVANCES  
(F.S. Act Sec. 1014(a)(3))

This amendment would require cost-sharing for institutional (but not individual) grievances to be included in procedures negotiated by agency management and the exclusive representatives for resolution of implementation disputes relating to collective bargaining agreements. Our estimate, assuming a presiding officer's fee of \$300 per day plus travel and per diem, is that the average institutional grievance would have a cost of from \$1500 to \$3000.

Section 9(1): PROTECTION OF RIGHTS FOLLOWING MANDATORY CONVERSION  
FROM FOREIGN SERVICE TO CIVIL SERVICE  
(F.S. Act Sec. 2104)

As enacted, the conversion provisions of the Foreign Service Act expire on February 14, 1984 (July 1, 1984 for USIA). In some cases, it is now apparent that this will not be sufficient time to realign the personnel organization of the several agencies, particularly for groups of employees who were originally considered to be worldwide available and therefore appropriately remaining in the Foreign Service, but subsequently have been determined to be needed only for employment at home.

Changing circumstances may lead to shifting of functions from overseas to the United States or to development of new functions at home. Consistent with the intent of the Act that domestic functions be carried out by members of the Civil Service, such a change would allow realignment of our two personnel systems without loss of pay, status, or benefits by employees. The three year period would be consistent with the conversion period allowed other converttees under the Act.

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Section 9(2): SELECTION-OUT AUTHORITY FOR A.I.D.  
(F.S. Act Sec. 2106(e)(2))

This is a technical amendment. Prior to the effective date of the Foreign Service Act of 1980 the Department of State had a selection-out procedure for Foreign Service officers who failed to meet standards of performance prescribed by regulation. Selection-out was not applicable to State's Foreign Service Staff (FSS) employees. State's authority for selection-out was based on section 633 of the Foreign Service Act of 1946. Concurrently A.I.D. had a selection-out procedure applicable, with certain exceptions, to all A.I.D. FSS and Foreign Service Reserve (FSR) employees; however, A.I.D.'s selection-out authority was based on Section 625(e) of the Foreign Assistance Act of 1961, as amended.

Section 608 of the 1980 Act, which replaces both former selection-out authorities, is applicable to the United States citizen Foreign Service career members of all the foreign affairs agencies.

Underlying submission materials indicate that the State Department wanted to limit adverse impact on individuals who were in a career Foreign Service Staff status prior to the enactment of the Foreign Service Act of 1980 (October 17, 1980) and thus were not subject to selection-out, but who were involuntarily made "members of the (Foreign) Service" under the 1980 Act. To achieve this result the drafters of the 1980 Act, in section 2106(e), exempted career appointees who had not been subject to section 633(a)(2) of the 1946 Act immediately prior to February 15, 1981 from selection-out for ten years. Unfortunately, a literal interpretation of the language of section 2106(e) could also exempt A.I.D. Foreign Service employees who were not subject to section 633(a)(2), but instead were subject to the FAA counterpart, section 625(e).

This amendment merely corrects a technical defect in the statute by making clear that A.I.D. Foreign Service employees, who were all subject to selection-out under Section 625(e) of the FAA, remain subject to the selection-out provisions of Section 608 of the 1980 Act.

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Section 10: FOREIGN COMMERCIAL SERVICE LIMIT ON NON-CAREER SFS  
APPOINTMENTS (F.S. Act Sec. 2403(c))

The proposed amendment would delete any reference to a time limit on Foreign Commercial Service exclusion from section 305(b). The exclusion allows up to 10 limited appointments to the Senior Foreign Service by the Secretary of Commerce. This change is being sought by the Department of Commerce because the October 1, 1985 expiration date in the Foreign Service Act of 1980 does not allow for "phased hiring" during the period of transition from State detailees to FCS personnel. Moreover, the Department needs flexibility indefinitely to competitively fill numerous SFS positions with available highly qualified private sector executives.

Typically, the individuals would serve one 3-4 year tour and apply their expertise to penetrating difficult export markets and building extensive Embassy contacts in host countries and regional markets.

Section 11: USE OF GOVERNMENT VEHICLES/EXTRA PER DIEM FOR  
INDIVIDUALS ACCOMPANYING DIGNITARIES (BASIC  
AUTHORITY, Sections 2, 11, 30, 32)

Section 2. As section 2 is currently worded, the annual appropriations act must specifically appropriate funds for the purposes specified in section 2. This requires additional wordage in the appropriation act and creates a risk that it might inadvertently be omitted. The first amendment merely eliminates the need for the reference in the appropriation act.

The second amendment is to section 2(f) which authorizes payment of tort claims. As currently worded, only the provisions of the first paragraph of 28 U.S.C. 2672 (the Federal Tort Claims Act) are incorporated by reference. As a result, there are certain anomalies when the Department settles a tort claim arising overseas. As in the case of claims arising in the United States, administrative settlements are subject to Justice Department approval. The Justice Department provides for legal representation in court and pays any judgment or settlement of the litigation out of the permanent indefinite appropriation for the payment of judgments and compromise settlements (31 U.S.C. 1304). Administrative settlements over \$2,500, however, are paid from State Department appropriations, whereas a settlement of an otherwise identical claim arising in the United States and settled by the Department would be paid from the permanent indefinite appropriations. In the case of large claims arising abroad, such as medical malpractice, the Department may be unable to defer other programs for which its appropriations were made and find funds to pay. This amendment would treat claims arising abroad the same way as domestic claims.



The third amendment would add a new section 2(g) which would authorize expenditure of funds for experts and consultants. Such authorization is required by section 3109 of title 5, United States code. At present, such authorization is contained in annual appropriation acts. This amendment would avoid the need for annual repetition of this authorization.

Section 11. Because of prior legislative changes, section 11 of the Department's Basic Authorities Act of 1956 is now duplicative of section 28 of the same Act. The first change would repeal section 11 to eliminate this redundancy. The second change codifies the Department's existing authority to use funds appropriated to the Department for international arbitrations and similar proceedings and for contract dispute arbitrations. This authority is currently in the general provisions of the Department's appropriation act and therefore requires reenactment each year. The amendment eliminates the need for annual repetition of this appropriation language.

Section 30. The present wording of the Department's medical malpractice statute is sufficiently unclear that at least one court has ruled that, in the case of a claim arising overseas, the provision substituting the Government for the doctor as defendant is inapplicable. This interpretation defeats one of the main purposes of the statute. In order to confirm that the exclusionary clause in the Federal Tort Claims Act for torts arising overseas does not prevent substitution of the Government as defendant in medical malpractice claims arising abroad, this amendment clarifies that benefits under the Federal Tort Claims Act need not be available to make an action under this medical malpractice statute the exclusive remedy.

Section 32. This section of the Department's Basic Authorities Act now provides for additional per diem for security officers and other employees required to accompany principals of the Department and Foreign dignitaries, and who thereby incur additional expenses by virtue of the lodging and other facilities they must use in order to carry out their responsibilities. The proposed amendment would extend this authority to officers of AID and USIA in like circumstances.

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Sections 12(1): CALCULATION OF LUMP SUM LEAVE PAYMENT  
UPON SEPARATION (5 U.S.C. 5551)

This amendment would prohibit inclusion of any post differentials or foreign or territorial allowances for hardship in lump sum leave payments for employees who retire from a post abroad rather than in the United States. The existing statute provides the possibility of a windfall payment, which the Inter-Agency Committee on Allowances has recommended be eliminated. This amendment would produce government-wide savings. The term "basic pay" is defined in 5 U.S.C. 8331(3).

Section 12(2): HOME SERVICE TRANSFER ALLOWANCE  
(5 U.S.C. 5724(a)(3))

This amendment would extend to a maximum of 60 days (from the current 30 days) the period of reimbursement for temporary lodging/subsistence upon transfer from a foreign post to a domestic post. The current provision of 30 days (derived from general authority in 5 U.S.C. 5924(2)(B) and Sec. 901(14) of the Foreign Service Act of 1980) matches a specific provision in the Federal Travel Regulations (based on 5 U.S.C. 5724(a)(3)) for domestic agency employees returning from foreign areas. There is an anomaly under present legislation. Government employees transferring from non-foreign overseas areas (Alaska, Hawaii, Puerto Rico and other U.S. territories and possessions) have up to 60 days provided for temporary lodging in the U.S. whereas Government employees transferring from foreign countries, often involving greater distances and delays in the receipt of household effects, etc., do not have this extra 30 days. Even if employees are prepared to "camp out" in a house while awaiting the arrival of HHE there is little likelihood that anyone in the real estate market could locate a house and obtain financing, let alone go to settlement, within the 30 day temporary lodging/subsistence period. While it is true that the 30 day period is standard for domestic transfers of USG employees, that benefit is part of a package that also includes a house hunting trip to the new U.S. post of assignment. No house hunting trip is available for employees returning from assignments overseas. In addition, this amendment authorizes subsistence at an amount prescribed for a high rate geographical area where the maximum per diem is inadequate.

Section 12(3): TRAVEL AND TRANSPORTATION IN CONJUNCTION WITH  
SEPARATE MAINTENANCE ALLOWANCE (5 U.S.C. 5725(a))

An amendment to 5 U.S.C. 5924(3), contained in section 2307 of the Foreign Service Act of 1980, provided that a member of the Foreign Service could request Separate Maintenance Allowance (SMA) "because of special needs or hardship involving the employee or

the employee's spouse or dependents." Previously, SMA was available only at the convenience of the government. By omission, the corresponding section in 5725(a) of 5 U.S.C., allowing government payment of travel and transportation of effects expenses for those authorized SMA was not amended to provide for travel and transportation for SMA at the request of the employee. This amendment corrects this situation. It will be particularly beneficial to government employees not in the Foreign Service, since most SMA travel for members of the Service can be authorized under existing provisions of section 901 of the Foreign Service Act of 1980.

Section 12(4): ADVANCE PAYMENT OF DIFFERENTIALS  
(5 U.S.C. 5922(b))

This amendment permits advance of differentials, such as the special incentive under 5 U.S.C. 5925(b), as well as allowances to which the authority is now limited.

Section 12(5): EDUCATION ALLOWANCES AT TIME OF TRANSFER, FOR  
HANDICAPPED CHILDREN AND AT POST SECONDARY  
EDUCATIONAL INSTITUTIONS (5 U.S.C. 5924(4))

Together, these changes update and improve the education allowance system to bring it into line with current circumstances and problems.

The first change permits payment of educational allowances for children of employees being transferred or newly assigned to a Foreign Service post with inadequate schooling for the entire school year, even if the member of the Service does not depart the United States until after the beginning of the school year. (Generally, the reverse situation, transfer back to the United States during the school year, can be managed, if the member of the service wishes his or her children to remain in their current schools during the remainder of the semester.)

The second amendment would permit educational services to be provided for handicapped children, beginning at age 3. P.L. 94-142, the "Education for All Handicapped Children Act of 1975," requires all states to offer public educational facilities for handicapped children from age three. It seems desirable, if not mandatory, to amend 5 U.S.C. so that overseas education allowance policy may be consistent with U.S. public school education practice for handicapped children. Under present law, no allowance can be granted for a handicapped or normal child under age 4 and who is not at least in a kindergarten program.

The third amendment would permit post-secondary educational travel for dependents not only for undergraduate college education, but also at other institutions such as nursing, technical, vocational, music and performing arts schools which are not considered colleges. This amendment is necessary in order to provide the appropriate kinds of post-secondary education for a wider variety of chosen career fields for dependent children. The term "educational institution" in the text of the amendment is drawn from 38 U.S.C. 1701(a)(6) (Veterans Benefits). It is not planned to extend the benefit during post-graduate education, as is possible for Veterans. Accredited educational institutions at which these benefits can be used will be determined by reference to an established list, such as that developed by the Veterans Administration or the Office of Education. The list or lists to be used will be specified by regulations issued by the Secretary.

Section 12(6): BURIAL EXPENSES FOR FOREIGN SERVICE NATIONAL  
EMPLOYEES (5 U.S.C. 5944)

The existing provision provides for a \$100 payment of burial expenses for FSN employees. At times, this is in conflict with local practice and can give the appearance that the United States Government does not properly appreciate or value the contributions of its Foreign National employees. If this section is repealed, the intention would be to rely upon the authority contained in section 408 of the Foreign Service Act of 1980, Local Compensation Plans, to develop appropriate provisions for payment of burial and last illness expenses where such payment is in accordance with local practice in specific countries.

1/13/83

FOREIGN SERVICE ACT AMENDMENTS

State Department Cost Estimates

\$ 1,200,000	"On Call Pay" Section 4 (5)
5,000	Storage of Household Effects Section 7 (1)
40,000	Travel for Children of Separated Parents Section 7 (2)
675,000	Home Service Transfer Allowance Section 12 (3)
225,000	Education Allowances at Time of Transfer, for Handicapped Children, at Post Secondary Educational Institutions Section 12 (6)
15,000	Burial Expenses for FSN's Section 12 (7)
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\$ 2,160,000	Total

(Round to \$2.2 Million)

January 13, 1983

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